In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 780

LEE MARSHALL HARRIS AND MORRIS RAY CALDWELL,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 427 F. 2d 1368.

JURISDICTION

The judgment of the court of appeals was entered on July 27, 1970. A petition for rehearing was denied on August 28, 1970. On September 28, the petition for a writ of certiorari was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether customs agents had authority to search a vehicle believed to be carrying contraband at a location approximately five blocks from the place where

petitioners and the driver of the truck had been arrested on probable cause to believe they were involved in smuggling.

STATEMENT

Petitioners are charged with smuggling marijuana into the United States, in violation of 21 U.S.C. 176a and 18 U.S.C. 545. On September 25, 1969, the United States District Court for the Central District of California granted a motion to suppress evidence. On appeal by the government,[1] the court of appeals reversed (Pet. App. A), holding that the evidence was admissible; a request for rehearing *en banc* was denied (Pet. App. B).[2]

The evidence on the motion to suppress showed that the driver of a Ford pickup truck informed a customs agent that on July 28, 1969, he would enter the United States from Mexico carrying contraband. On that day, agents saw the Ford truck enter the San Ysidro, California port of entry, followed closely by one Velasquez in a separate vehicle. After both vehicles had crossed the border they proceeded some distance towards Los Angeles; Velasquez then became the driver of the Ford truck (H. 32–35, 37).[3] In Los

[1] The government's appeal to the court of appeals was based on 18 U.S.C. 3731, as amended by P.L. 90–351 of June 19, 1968, 82 Stat. 197, 237–238 (18 U.S.C. (Supp. V) 3731); it was not taken under 18 U.S.C. 1404.

[2] A motion for a stay of the mandate of the court of appeals was, on October 10, 1970, granted by Mr. Justice Douglas.

[3] "H." refers to the transcript of the hearing held on the motion to suppress. We are lodging a copy of this transcript with the Clerk.

Angeles, both petitioners, driving a Chevrolet, met Velasquez and led him to a driveway where the truck was then parked. Velasquez joined petitioners and the three drove away. About a minute later, approximately five blocks from where the Ford truck was parked, customs agents stopped the Chevrolet and arrested petitioners and Velasquez for smuggling marijuana into the United States (H. 10–17, 38). The arresting agents returned immediately to the truck and pried loose a corner of the floor of the vehicle, revealing a concealed plastic-wrapped parcel (H. 17). At the hearing, it was stipulated "* * * that the truck came across the border and it was under constant surveillance up to the point where it was finally searched" (H. 8–9).

The district court found that probable cause for petitioners' arrests existed (H. 48), but that under *Chimel* v. *California*, 395 U.S. 752, the search of the vehicle without a warrant was impermissible (H. 49).

In reversing the ruling of the district court, the court of appeals relied upon its prior decision in *Castillo-Garcia* v. *United States*, 424 F. 2d 482, which upheld, as a "border search" not requiring probable cause, the search of a vehicle believed to be carrying marijuana that had been under constant surveillance from the time it crossed the border.

ARGUMENT

The search in this case was valid irrespective of the issue of whether it could be justified as a border search based on less than probable cause.

There was here ample probable cause to believe that the vehicle was carrying smuggled marihuana. The original driver had said the truck would be carrying marihuana; the conduct of petitioners and Valasquez after the vehicle crossed the border served to confirm that information and their connection with the smuggling. The case is thus governed by *Chambers* v. *Maroney*, 399 U.S. 42, which holds that a warrantless search of a vehicle may be made on probable cause to believe that it is carrying contraband. See also *Carroll* v. *United States*, 267 U.S. 132.

Congress has long given special authority to customs agents to examine vehicles in transit in the United States where there is "reasonable cause to suspect" that the goods have been brought into this country contrary to law (see 19 U.S.C. 482 and 19 U.S.C. 1595(b)). On the facts of this case however, it is not necessary to reach the question whether a vehicle, which has been constantly observed after crossing the border, may be searched, as at the border, on suspicion not amounting to probable cause.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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